



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL MISC. APPLICATION NO. 35 OF 2019

COUNTY GOVERNMENT OF KAKAMEGA.....1ST APPLICANT

KAKAMEGA COUNTY YOUTH BUNGE SACCO....2ND APPLICANT

VERSUS

THE OFFICE OF ODPP.....1ST RESPONDENT

CHIEF MAGISTRATE

KAKAMEGA LAW COURTS.....2ND RESPONDENT

OCS KAKAMEGA POLICE STATION.....3RD RESPONDENT

THE HON. ATTORNEY-GENERAL.....4TH RESPONDENT

RULING

1. I have had considerable difficulty understanding the matter that is before me in this cause. .

2. In the first place the Motion is brought against state entities who are created by the Constitution and whose mandates are set out in the Constitution and by enabling legislation. Where such bodies act in excess of jurisdiction, or abuse power or jurisdiction, or act illegally or arbitrarily, the remedies available would be through a constitutional petition or judicial review application. The remedies available through these processes can only be accessed within certain parameters and there are set thresholds.

3. I doubt whether the Motion before me meets those parameters. For a constitutional petition, the test is stated in *Anarita Karimi Njeru vs. Attorney General* (1979) KLR 154, *Meme vs. Republic* [2004] eKLR and *Mumo Matemu vs. Trusted Society of Human Rights Alliance and others*, Nairobi Civil Appeal No. 290 of 2012, among others. The constitutional violations alleged must be stated. The Motion as framed does not state in any coherent manner whether the Constitution has been violated by the respondents in any way.

4. Judicial review and fair administrative actions are about state bodies acting without the law. They provide remedies for abuse of power or discretion, caused by such things as acting outside the powers conferred by the law or acting arbitrarily or unreasonably. Looking at the affidavit in support of the application, it is merely alleged that the police were acting illegally, but the illegal acts which ought to provide a basis for that averment are not set out. There are no averments as to what the police have done which can be described as illegal. It is not clear too from the affidavit why the Office of the Director of Public Prosecutions and the Chief Magistrate have been sued or named as parties. There is not even one averment or allegation against them. They are not alleged to have done anything to warrant their being made parties to the matter. Needless to say that if the applicants desired to obtain judicial review remedies they ought to have moved the court properly. I say so notwithstanding Article 159 of the Constitution.

5. Secondly, it is not clear who the applicants are in the matter. There is no description of the applicants as would be expected in a constitutional petition or judicial review application. The role of either applicants is not brought out at all in the body of the affidavit drawn in support of the application. It is not alleged that either the two applicants did anything at all or their rights were violated at all or anything was done by the respondents that might have violated their rights. It is not clear why they are applicants. The deponent of the affidavit in support of the application has not indicated how he is related to either of the two applicants. He does not allege to have sworn the affidavit on their behalf or with their approval. He could be a total stranger to them or a busybody for he does not make any attempt to draw a connection between himself and the applicants.

6. I notice that the application is brought under section 69 of the Criminal Procedure Code, Cap 75, Laws of Kenya. The said provision says as follows:

“69. Powers of High Court

The High Court may inquire into and try any offence subject to its jurisdiction at any place where it has power to hold sittings.”

7. My reading of the above provision is that it does not justify the approach that the applicants have adopted in seeking the orders that they seek. It does not grant the High Court powers to grant the orders sought against the respondents other than through a constitutional petition or judicial review. Section 69 is about the High Court having jurisdiction in criminal offences, which has nothing to do with what is before me in the Motion.

8. I believe I have said enough. The Motion dated 31st May 2019 cannot possibly form basis for grant of the orders that are sought for the reasons that should emerge from what I have stated above. The application is misconceived, incompetent and bad in law. It is very badly drafted, and poorly conceived and presented. It is a clear abuse of court process. It is available for only one thing, dismissal. I hereby dismiss the same. Each party shall bear their own costs. Any party aggrieved by the orders that I have made herein is at liberty to move the Court of Appeal appropriately.

DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 1st DAY OF November 2019

W MUSYOKA

JUDGE